

THE ISSUE OF CONFIDENTIALITY: A PERSPECTIVE FROM THE NURSING PROFESSION*

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CONFIDENTIALITY of health records is not a new issue to the Occupational health nurse, but it is becoming increasingly complex.

Because of the concerns of the public, the Congress, and regulatory agencies in safeguarding the privacy of communications and the confidentiality of business records, a fresh look at the privacy of employee records is essential not only by management, labor, and the physician, but also by the nurse.

Public Law No. 93-579, the Federal Privacy Act of 1974, established a Privacy Protection Study Commission to develop recommendations to the president and the Congress by mid-1977 on the extent to which the strict requirements of that Act (which now apply only to federal agencies) should be applied to organizations in the private sector. How might the five "fair information practice principles" affect nursing?

THE PRINCIPLES

1) *There must be no personal data record-keeping system whose very existence is secret.* In most companies, from the time an applicant for employment is first seen in the medical department to the end of his career, an individual sequential health record is created. The prospective employee should be informed that such a record is being created, even though it is commonly known that such records are always part of an employee-physician-nurse relation. The nurse would be the logical person to inform the employee of the creation and purpose of the health record, perhaps during the pre-employment interview.

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2) *There must be a way for an individual to find out what information about him is in a record and how it is used.* Health information contained in the medical record should be provided to the employee unless it were not in the employee's best medical interest, i.e., terminal illnesses or selected psychiatric diagnoses. The information on the health record should be reviewed with the employee by a professional staff member who can interpret it. Again, in most cases a professional nurse would be the logical staff member to review the health record with the employee in nontechnical terms, taking the time to be sure the instructions and the rationale are understood, and then to assist him in taking whatever steps are necessary to improve his health.

3) *There must be a way for an individual to prevent information obtained for one purpose from being used for another without consent.* The employee's concurrence and signed authorization regarding health information should be obtained before transmitting any health information to his personal physician, insurance company, or other outside agency unless in response to valid legal process or pursuant to statutory requirements. Then appropriate notice should be given to the employee as determined by company procedure.

Responsibility for the preparation of proper forms for transmittal could be delegated to clerical staff. It is essential that all staff responsible for handling, storage, and dissemination of health data be aware of their responsibility for the confidentiality of that data. This would or would not be the responsibility of the nurse, depending upon the size of the occupational health staff.

4) *There must be a way for an individual to correct or amend records.* The employee should be advised that he may, at any time, request to change, amend, correct, or expand the health history recorded. Here, the nurse working with the physician should assist in establishing guidelines and recommendations for appropriate access to the health record.

5) *An organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take precautions to prevent misuse of the data.* The medical department is responsible for appropriate measures to ensure accuracy and overall reliability of health data generated by the company itself. Likewise, the employee has a responsibility to provide honest and correct information regarding his health information.

As nurses, we have long been aware of the importance of confidential-

ity. *The Code For Nurses*, published by the American Nurses Association, succinctly states: "The nurse safeguards the individual's right to privacy by judiciously protecting information of a confidential nature, sharing only that information relevant to his care."¹

The interpretive discussion of this statement further states:

The nurse has a clear obligation to safeguard any confidential information about the patient that she may acquire from the patient himself or from any other source. The nurse-patient relationship is built on trust; this relationship could be destroyed and the patient's welfare and reputation jeopardized by the nurse's injudicious disclosure of confidential information.

In some instances, however, knowledge gained in confidence is relevant or essential in planning the patient's care. Under these circumstances, and guided by her professional judgment, the nurse may share the pertinent information with others who are directly concerned with the patient's care. But she discloses only the information relevant to the patient's welfare, and only to those who are responsible for maintaining and promoting it. The rights, well-being, and safety of the individual patient should be the determining factors in the decision to share this information.²

The Code of Ethics of the American Association of Occupational Health Nurses, Inc. states that occupational health nurses should: "Safeguard the employee's right to privacy by protecting information of a confidential nature; releasing information only as required by law or upon written consent of the employee."³

These codes are clear but the issue is complex. In the occupational setting the occupational health nurses' primary responsibility is to the employee; his health and welfare must come first. Our goal is to assist in protecting his health and safety. To do this, it is necessary to obtain and retain certain information as part of the health record. Much of this information is confidential. From the data obtained one must determine not only the health status of the individual but also his compatibility with the requirements of his job.

But then what is our responsibility to management? Is there an irreconcilable conflict between the interests of the employee and of the employing company? Are there competing interests? I do not believe so. I believe that what benefits the employee's health ultimately benefits the employer.

Health information must be communicated to the employer regarding the employee's capability to perform the job without being a safety or health hazard. But just how much detail do management, the Occupational Health and Safety Act inspector, and others need to know? Is it necessary for the employer to know, for example, that an employee has acute glomerulonephritis, with details regarding how the diagnosis was reached,

or is it sufficient to know that the employee is “disabled due to a kidney disorder which is serious but in which there is a reasonably good chance of recovery in two or three months”—a general statement. And so we have a dilemma: the privacy of the worker versus a report to management regarding the worker’s health status.

I agree with Edna May Klutas who says, “Basically, management needs an interpretation of the medical information to enable him to maintain plant production through informed planning, to place workers in jobs that are within their capabilities, to protect the health and safety of the worker and co-worker, and to meet the legal and insurance requirements.”⁴

In my own organization a committee is established to examine various aspects of the employee-privacy issue. This committee re-examines Bell System policies, practices, and procedures required for employment and personnel records to ensure that the spirit of fair information principles are recognized. Re-examination of this entire subject will lead to comprehensive recommendations for action. Other large companies are doing likewise, and policies and procedures will be developed to guide health professionals. But what about smaller employers?

This area becomes especially critical to the nurse working alone without a full-time physician. Here there is a real need for clear, sound guidance. Again, I agree with Klutas who says “...the nurse should be working with a physician who provides the medical direction for the occupational-health program. This direction should include provision of a policy statement relative to the disclosure of confidential information. And, the policy statement should be made known to and understood by the occupational health staff, management, and the employees.”⁵ She goes on to say that “the nurse has the responsibility to work with the physician and management to develop the policy statement on confidentiality of medical information.”⁶

This year the American Association of Occupational Health Nurses revised their guide, *Principles of Privileged Communications for Occupational Health Nurses*.⁷ They recommend that the nurse:

- 1) Learn and utilize company policy regarding procedure for the release of privileged communications.
- 2) If the Company does not have a defined procedure, or if the employer’s rules do not conform to ethical and legal standards, institute a co-operative action with management to effect necessary changes.

Some of the items nursing should consider when developing a defined procedure are:

A) Pre-employment information. Where kept? Employee access? Other access? How long retained?

B) Medical information on employees. Where kept? Employee access? Other access? Retention period?

C) Epidemiological studies—mortality and morbidity type. Are they conducted? How used? Who has access?

D) Are medical records computerized? Who keeps them? Who has access? How long kept? In what form?

In addition, if the nurse carries responsibility for benefits (employee, family, or dependents), he should know:

A) Information needed for benefit administration. How obtained? Where filed? Who has access? Retention?

B) Claims information (employee/family/dependents). How handled? What is security arrangement? Who has access? How long retained?

The nurse should also be aware of company policy regarding the record-retention schedule. How is the record retained? Is it on microfilm? What specific information is kept? Who has access? How long is it kept? What happens upon transfer, discharge, resignation, leave of absence, retirement, or death? In what form is it kept? Does this change?

Even though the company has policies and procedures regarding the release of privileged communications, it is still the nurse's responsibility to see that her practice conforms to the imposed ethical and legal standards. The occupational health nurse *is* accountable.

AAOHN further recommends that the nurse:

3) Join and participate in the various professional nursing organizations which are attuned to the changes and developments in the practice and the law.

4) Make and keep contact with the administrative bodies and agencies administering health laws within your state. (In some states, agencies such as the Board of Health have laws as well as rules and regulations covering the release of medical and nursing records and information.)

5) Read current nursing journals published for the general practice of nursing as well as journals in your specialized area of practice.

6) Attend conferences, seminars, and continuing educational offerings sponsored by the professional organizations, administrative agencies, or other organizations concerned with the practice.

7) Consult legal counsel in instances where called on to testify in court or in an administrative proceeding. Legal counsel should also be employed when doubt arises in regard to the propriety of disclosing privileged information in a "non-judicial" setting.

Today, more than ever before, the nurse must be well-versed in the principles governing the handling of privileged communication. We must use sound judgment in applying these principles in each situation for we

are accountable for our own actions. We must take an active role to promote and preserve the confidentiality of health-care records. And we must actively assist in establishing guidelines and policies and make recommendations for action and implementation.

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